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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 729

FRED THIELE AND EUGENE PANGER, CO-PARTNERS, D/B/A TWIN TOWERS COMMISSARY,

Respondents,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, AND MARTIN H. KENNELLY, MAYOR OF THE CITY OF CHICAGO; TIMOTHY J. O'CONNOR, COMMISSIONER OF POLICE OF THE CITY OF CHICAGO; AND ROY T. CHRISTIANSEN, COMMISSIONER OF BUILDINGS OF THE CITY OF CHICAGO,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now the Petitioners, City of Chicago, a municipal corporation, and the Mayor, Police Commissioner and Commissioner of Buildings of said City of Chicago, and pray that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois, entered in the above-entitled cause on September 20, 1957, rehearing denied November 19, 1957.

Citations to Opinions Below.

The judgment of the Superior Court of Cook County, Illinois is unreported, appears in the Transcript of Record at p. 3-B (Add. Abst. 14-16) and is attached hereto as Appendix A. The opinion of the Supreme Court of Illinois is reported in 12 Ill. 2d 218, appears in the Transcript of Record at pp. 6-9, and is attached hereto as Appendix B.

Jurisdiction.

The judgment of the Supreme Court of Illinois was entered September 20, 1957.

Petition for rehearing was denied November 19, 1957.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3).

Questions Presented for Review.

1. Are the licensing and zoning ordinances of the City of Chicago unenforceable against the respondents by virtue of the provisions of Article 1, Section 8, Clause 17 of the Constitution of the United States?

2. Is the principle of sovereign immunity applicable to respondents?

3. If exclusive legislation over condemned land is vested in the Congress of the United States under Article 1, Section 8, Clause 17 of the Constitution of the United States and if Congress passes an act giving the Army the power to lease, subject to "local taxation", does a lease of such land requiring compliance with local laws permit enforcement of such local laws by municipal authorities against private parties who operate such land and improvements thereon for their own profit?

4. Is the power of "local taxation" provided for in Sec-

tion 6 of the Military Leasing Act of 1947 (10 U. S. C. Section 1270d) limited to the assessment of taxes or does it also include the power of a municipality to tax and regulate a private business having a direct relationship to the public health, safety and welfare?

5. Does Paragraph 7 of the lease which provides (Rec. 3-B; Add. Abst. 8):

> "That the Lessee shall comply with all applicable laws, ordinances, and regulations of the State, County, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters."

inure to the benefit of a municipality, where the apartment building (in which respondents' commissary is located) is situated on the "naked land" of the Federal Government, covering only a square block (Rec. 3; Abst. 13) and entirely within the borders of the municipality?

6. Is a commissary (owned and operated by a private individual for personal profit), located in an apartment building (owned and operated by a private individual for personal profit), but erected on the "naked land" owned by the Federal Government, a "Federal enclave" not subject to a regulatory municipal ordinance, where the "naked land" is not more than a square block in size and entirely within the boundaries of the municipality, and where the residents of the municipality are at liberty to patronize the commissary?

Constitutional and Statutory Provisions.

The constitutional provisions involved are contained in Article 1, Section 8, Clause 17 of the Constitution of the United States (Appendix C); the statutory provisions involved are the Military Leasing Act of 1947, 61 Stat. 774-776, 10 U. S. C. Sections 1270, 1270d (Appendix D), the

Wherry Military Housing Act of 1949, 63 Stat. 570, 12 U. S. C. Section 1748d (Appendix E), and Sections 130-10, 130-11, 130-12, 130-13, 130-14 of the Municipal Code of Chicago (Appendix F).

Statement of the Case.

The respondents operate a food store in an apartment building in the City of Chicago. Exclusive legislative jurisdiction over the land on which the building stands has been ceded to the United States by the State of Illinois. The land was acquired by condemnation at which time a statute of Illinois (since repealed) ceded to the United States exclusive jurisdiction over land that it acquired in Illinois, reserving only the right to serve civil and criminal process (Rec. 6). After the United States secured title, the Secretary of War advised the Governor of Illinois that the United States accepted the ceded jurisdiction.

Pursuant to congressional authority, the Secretary of the Army thereafter leased the property to Herbert S. Greenwald for a term of 75 years at a rental of $100 a year. By the terms of the lease the lessee undertook to build and maintain a housing project of 253 units, the lease providing for priority of occupancy by military and civilian personnel of the Armed Forces, but in default of such occupancy the lessee was authorized to lease to other persons (Rec. 6).

The plans for the building included space for a food store and the space so provided was leased by Greenwald to the respondents. The food store is not operated for the exclusive benefit of residents of the premises, but sales are made to the general public which has access thereto (Rec. 3, Abst. 18; Rec. 6).

Under the terms of the lease to Greenwald, title to all improvements constructed upon the land by the lessee would remain in the lessee during the term of the lease, but, upon

expiration or termination of the lease, all improvements thereon would become the property of the Federal Government without compensation unless the lessee elected to remove the improvements and restore the premises to their original condition (Rec. 3-B; Add. Abst. 9, 10). The lease also provided that (Rec. 3-B; Add. Abst. 8):

> "* * * the lessee shall comply with all applicable laws, ordinances and regulations of the State, County and municipality wherein the demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters."

Paragraph 13 of the Lease further provided (Rec. 3-B; Add. Abst. 10):

> "* * * the Lessee shall observe and perform all the laws, ordinances, rules and regulations relating to health and sanitation * * * and will indemnify and save harmless the Government against all actions, suits, claims and damages by whomsoever brought or made by reason of the failure to keep said buildings and improvements in good order, condition and repair, or by reason of the non-observance or non-performance of the said laws, ordinances, rules and regulations * * *."

The respondents failed to comply with the licensing and zoning ordinances of the City of Chicago and instituted this action for declaratory judgment contending that such ordinances were either inapplicable to respondents or unconstitutional as being in contravention of Article I, Section 8, Clause 17 of the United States Constitution.

The federal questions were, therefore, raised by the complaint (Rec. 3; Abst. 1-7). The trial court held that the United States had exclusive jurisdiction over respondents' food store and that the municipal ordinances of the City of Chicago were inapplicable to such premises (Rec. 3-B; Add. Abst. 14-16). The Supreme Court of Illinois affirmed the decree of the trial court (Rec. 6-9).

Reasons for Granting the Writ.

I.

The court below has decided a federal question of substance not heretofore determined by this Court.

The United States holds "naked title" to certain vacant land in the City of Chicago. This land has been leased to Greenwald, a private individual, who constructed a huge apartment building on the land. The lease provides that $100 per year be paid by Greenwald to the United States for the use of such land and that title to the apartment building remain in Greenwald for the 75 year term of the lease. Upon the expiration of the lease, Greenwald may remove the improvements from the land and retain them. If he fails to do so, the improvements become the property of the United States without compensation to Greenwald. Greenwald operates such apartment building for profit, no part of which inures to the benefit of the United States. Greenwald sub-leased a portion of the premises to the respondents, private individuals, who operate a commissary therein for profit. Respondents operate the commissary for the benefit of the general public, not restricting access thereto to occupants of the apartment building.

The court below relied upon *Collins* v. *Yosemite Park Co.* (1937), 304 U. S. 518, as being controlling. The facts in the ca. at bar are easily distinguishable from the *Collins* case.

In the *Collins* case, the United States acquired the land there concerned by Treaty in 1848. In 1850, when California became a State, the United States reserved its proprietary interest in such land. Later it was given to California, but subsequently again ceded to the United States. Today the United States exercises control over such land and operates it as a National Park. In the case at bar, the United States is not in active control of the apartment building operated

by Greenwald. In the *Collins* case, a *portion* of the land was leased to the Yosemite Park Co. which was given the right to sell alcoholic beverages to visitors. In the case at bar, *all* of the land has been leased and the United States has no joint interest in its control or operation. In the *Collins* case, the contract provided that the Yosemite Park Co. should retain profits up to a certain amount. In excess of this amount, the Park Co. was required to pay a percentage of the profits to the United States. In the case at bar, of course, the United States derives no benefit from the operation of the apartment building and is not an active "partner" sharing in the profits as in the *Collins* case. Greenwald and the respondents retain all profits, no matter how sizeable, and are solely responsible for operating and controlling the premises concerned.

In the *Collins* case, prices charged by the Yosemite Park Co. were to be approved by the Secretary of the Interior and, in determining profits for sharing with the United States, no allowance was made for the payment of local taxes. Any local taxes paid would not be considered a part of the operating expenses under the contract.

The Yosemite Park Co. brought suit to enjoin the State of California from enforcing its laws requiring a license to sell liquor and providing for regulatory measures for the liquor business. This Court held that California was powerless to regulate the activities of the Yosemite Park Co. The reasons are obvious. First of all, the United States was actively in charge of the entire Yosemite National Park and local governments could not interfere with such operation. Secondly, the United States was a "partner" in a profit-making enterprise in connection with the portion of the park leased to the Yosemite Park Co. Enforcement of local laws would permit regulation of a business operated within an area controlled by the United States Government and from which it received profits.

In the case at bar, the United States leased *all* of its land; it derives no pecuniary benefit from the operation of the land and the improvements thereon; it holds "naked title" as "owner", but Greenwald holds title to the building and may remove it at the termination of the lease. We perceive no analogy between the *Collins* case and the case at bar. We believe the court below was grievously in error in ruling that the *Collins* case was controlling.

In leasing its land to Greenwald, the United States specifically provided that he would comply with all laws of the City of Chicago with regard to construction, sanitation, licenses or permits to do business, and all other matters. What possible justification can the respondents have for failing to so comply? The fees chargeable by the City of Chicago for a Food Purveyors' license are nominal, almost negligible. But, before the license will issue, the Chicago Board of Health must inspect such premises and examine the employees engaged in employment there. Why are the respondents averse to such inspection and examination? The mere fact that they are averse makes them suspect. Petitioner is concerned with residents of the City of Chicago who may avail themselves of respondents' commissary, as well as with military and civilian personnel living in the building.

We know of no food purveyor anywhere who may operate without health inspections, preliminary to the issuance of a license. Under the opinion of the Illinois Supreme Court, the respondents in the case at bar are at liberty to maintain their premises in any condition they please. They may hire employees in any condition of health. Who is there to enforce normal safeguards over a business selling food to the general public? It is unconscionable, and inconceivable; that respondents may be permitted to continue this operation. Are refrigeration facilities adequate? Is contaminated food being sold? Are persons suffering from

contagious diseases employed there? No one knows. Respondents hide behind sovereign immunity in the assumption that the Federal Government is disinterested in such matters. We do not believe so. The rigid health regulations enforced by the military services for their own personnel is the answer to the Government's viewpoint in this regard. But neither the military, nor the United States, has any control over Greenwald's premises. The building is his and the lease so states. The respondents are in a similar position. The respondents are answerable to no one, not even to the government of the United States. The precise reason for the provision in the lease requiring respondents to comply with local laws was because the United States thereby relieved itself of supervisory inspections and regulatory duties in an area where it had no active control.

The very purpose of paragraph 13 of the Lease requiring the respondents to observe and perform all ordinances relating to health and sanitation and to indemnify the Government against all actions by whomsoever brought by reason of non-performance of said ordinances, was to compel enforcement by local authorities. Respondents *must* save the Government harmless from this action as well as any other. They cannot avoid it by cloaking themselves in so-called "sovereign immunity," because their lease with the Sovereign insisted upon observance of local ordinances.

Article 1, Section 8, Clause 17 of the Constitution vests exclusive legislation in the Congress of the United States over all land purchased *for the erection of needful buildings*. In the case at bar, it is not apparent that the land in question was purchased "for the erection of needful buildings." However, all of such land was leased by the United States to private individuals for a negligible rental. The building erected upon such land is the sole property of

such private individuals and operated by them for profit. The respondents are further removed from the United States in that they are sub-lessees of a part of the premises concerned and their operation is completely removed from control or supervision by the United States or the military. They are engaged in a business enterprise at prices established by them. They deal with citizens of the City of Chicago who have access to respondents' commissary as well as with occupants of the building. If the positive provisions of the lease requiring compliance with local laws may be flouted by the respondents, then the lease itself has been violated and respondents have no legal or equitable standing in court.

II.

The court below has decided a federal question not in accord with the applicable decisions of this Court.

This Court, and many state courts, have consistently sustained the right of local authorities to enforce municipal ordinances and state statutes against private parties in possession of businesses or buildings within federal areas. The case at bar is strengthened and distinguishable from most (if not all) such cases by the fact that the lease under which respondents operate specifically provides that they shall comply with local laws.

In *Offutt Housing Co.* v. *Sarpy County* (1956), 351 U. S. 253, this Court was confronted with a lease practically identical with the one involved in the case at bar, except that in the case at bar the lease additionally provided that compliance with local laws was necessary. In the *Offutt* case, this Court sustained the enforcement of local taxation against the lessee there involved.

In *People* v. *Vendome Service, Inc.*, 12 N. Y. S. 2d 183 (Affirmed, 19 N. Y. S. 2d 195), land was purchased for the

construction of a post-office. Prior to construction, the United States leased a portion of the premises to private individuals. Although New York had consented to the purchase, the United States had not as yet applied for exclusive jurisdiction. In finding the defendant guilty of failure to obtain a permit, the court said (p. 187):

> "* * * where, * * * the government leases the property to a private person to carry on a non-governmental function, such property is subject to the legislative authority and control of the State * * *."

In numerous other instances this Court and the various State courts have made similar rulings (*Palmer* v. *Barrett*, 162 U. S. 399; *Carnegie-Illinois Steel Corp.* v. *Alderson*, 127 W. Va. 807, 34 S. E. 2d 737 (Certiorari denied, 326 U. S. 764); *Chicago, R. I. & Pacific Railway Co.* v. *McGlinn*, 114 U. S. 542; *Herkens* v. *Glynn*, 101 P. 2d (Kans.) 946; *Fort Dix Apartments Corp.* v. *Borough of Wrightstown*, 225 Fed. 2d 473 (Certiorari denied, 351 U. S. 962); *Conley Housing Corp.* v. *Coleman*, 89 S. E. 2d (Ga.) 482; *Meade Heights Inc.* v. *State Tax Commission*, 95 A. 2d (Md.) 280; *Howard* v. *Commissioners*, 344 U. S. 624; *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261; *James Stewart & Co.* v. *Sadrakula*, 309 U. S. 94; *Alabama* v. *King & Boozer*, 314 U. S. 1; *Graves* v. *N. Y. ex rel. O'Keefe*, 306 U. S. 466; *Mayor and City Council of Baltimore* v. *Linthicum*, 183 A. (Md.) 531; *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558; *Murray* v. *Joe Gerrick & Co.*, 291 U. S. 315; *American Motors Corp.* v. *City of Kenosha*, 80 N. W. 2d (Wisc.) 363.)

Conclusion.

This is a case of first impression relative to the following issues:

1. Whether the provisions of Section 6 of the Military Leasing Act of 1947 as to "local taxation" are exclusive of

regulatory features which are inseparable from licensing ordinances.

2. Whether the express provisions of the lease involved requiring compliance with local laws are unenforceable by municipal authorities.

3. Whether the inherent right of governmental bodies to enforce measures for the protection of the health, safety and welfare of the community is inapplicable to respondents' commissary merely because the "naked land" upon which it is located is the property of the United States Government.

4. Whether the doctrine of "governmental immunity" can be asserted by a private individual who owns and operates for personal profit a commissary located in an apartment building (owned and operated by a private individual for personal profit) but erected on the "naked land" owned by the Federal Government and leased under the provisions of the Military Leasing Act of 1947.

Important public interest, national and local, requires that this matter should be heard, considered and decided on the merits by this Court.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

Judgment Order of the Superior Court of Cook County, Illinois.

DECLARATORY JUDGMENT.

This matter coming on to be heard on the plaintiffs' Motion for Summary Judgment, the court having considered the affidavits filed in support of said Motion, the affidavits filed by defendants in opposition to said Motion, the pleadings and the Briefs filed by the parties, and the Court having heard argument of counsel and now being fully advised in the premises,

The Court hereby finds that:

1. This Court has jurisdiction of the parties and of the subject matter hereof.

2. This is an action for declaratory judgment in a case of actual controversy instituted pursuant to the statutes of the State of Illinois in such case made and provided.

3. The plaintiffs are residents of the City of Chicago and engaged in business therein under the name and style of "Twin Towers Commissary" and operate a commissary, or food shop, in the building known as Twin Towers located in the City of Chicago in the block bordered by Fiftieth Street on the north, Leif Erickson Drive on the east, Fifty-first Street on the south, and East End Avenue on the west.

4. Title to the land on which the said Twin Towers building is located and on which the plaintiffs operate their aforesaid commissary is vested in the United States of America, said land having been ceded to the United States

of America by the State of Illinois pursuant to the laws of the United States and the State of Illinois.

5. The United States of America has sole and exclusive jurisdiction over the land on which the Twin Towers and the said commissary of the plaintiffs are located, except for the rights to service of process and making arrests, which rights were specifically reserved by the State of Illinois at the time of the said cession.

6. The municipal ordinances of the City of Chicago have no application or effect within the confines of the aforesaid land on which the plaintiffs operate their commissary and neither the City of Chicago nor any of its agencies, officers, agents or employees have any power, right or jurisdiction to enforce or seek to enforce the said ordinances against the plaintiffs, their agents or employees, in the operation of their said business on the said land.

7. The plaintiffs have substantially sustained and proven the allegations contained in their Complaint for Declaratory Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(a) The licensing and zoning ordinances of the City of Chicago are not applicable to the operation of the said Twin Towers Commissary,

(b) The plaintiffs, Fred Thiele and Eugene Panger, and either of them, and their agents and employees, may operate and conduct their aforesaid business known as the "Twin Towers Commissary" without regard to the licensing and zoning ordinances of the City of Chicago, and

(c) Neither the City of Chicago nor any of its agencies, officers, agents or employees have the right, power or jurisdiction to enforce or seek to enforce the said building and zoning ordinances of the City of Chicago against the plaintiffs, or either of them, their agents or employees, in the operation of their aforesaid business.

APPENDIX B.

OPINION OF THE SUPREME COURT OF ILLINOIS.

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

The plaintiffs operate a food store in an apartment building in the Hyde Park area on the south side of Chicago. Exclusive legislative jurisdiction over the land on which the building stands has been ceded to the United States by the State of Illinois, and the question is whether under the Federal constitution the licensing and zoning ordinances of the city apply to the plaintiffs' activities.

The land in question was acquired by the United States by condemnation. At that time a statute of Illinois, since repealed, ceded to the United States exclusive jurisdiction over land that it acquired within Illinois, reserving only the right to serve civil and criminal process. (Ill. Rev. Stat. 1943, chap. 143, pars. 23-25; see Laws of 1953, p. 1073.) After the United States secured title, the Secretary of War advised the Governor of Illinois that the United States accepted the ceded jurisdiction.

Pursuant to congressional authority, the Secretary of the Army thereafter leased the property to Herbert S. Greenwald for a term of 75 years at a rental of $100 a year. By the terms of the lease the lessee undertook to build and maintain a housing project of 253 units in accordance with plans approved by Federal authorities. The lease provides for priority of occupancy by military and civilian personnel of the Army, Navy, Marine Corps, or Air Force, but in default of such occupancy the lessee is authorized to lease to other persons.

The plans for the building included space for a food store. The space so provided was leased by Greenwald to the plaintiffs. After the plaintiffs had been arrested for operating the food store without the license required by the city's ordinance, this action was instituted for an injunction restraining the officials of the city from enforcing its licensing, building and zoning ordinances against the plaintiffs in the operation of their food store. A decree for the plaintiffs was entered upon their motion for a summary judgment, and the city appeals.

The constitution of the United States gives the Congress power "To exercise exclusive Legislation • • • over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts • • • and other needful Buildings." (Art. 1, sec. 8, clause 17.) The parties agree that exclusive jurisdiction under this provision was vested in the United States when the Secretary of War notified the Governor of Illinois that jurisdiction was accepted. 40 U. S. C. 255.

Areas so situated are known as Federal enclaves, or, more picturesquely, as "Federal islands" within the States. They present many problems. Persons who reside in such an area, although they live within the borders of a State, are not regarded as its residents. Absent special legislation or intergovernmental agreement, they may not vote, hold public office or serve on juries, and their children are not entitled to attend public schools. (U. S. Interdepartmental Committee For the Study of Jurisdiction over Federal Areas within the States, Report pt. 1, U. S. Govt. Printing Office, 1956; 101 U. of Pa. L. R. 124.) The Federal Assimilative Crimes Act (18 U. S. C. 13) has made State criminal law applicable within the enclaves, but enforcement of that law is a Federal and not a State responsibility. (See, *e.g.*, *United States* v. *Unzeuta*, 281 U. S. 138; *Benson* v. *United States*, 146 U. S. 325.) By Federal statute State

income, sales and use taxes have been made applicable within Federal enclaves. (4 U. S. C. 104-110.) There have been other similar accommodations. But State and local fire and police protection, garbage removal and other services are not available within Federal enclaves except by agreement, and even if there is agreement serious questions remain as to the status of State or municipal officers while performing these services.

The dominant fact in this case is that exclusive jurisdiction over the area in question has been ceded by Illinois to the United States. The city argues, however, that jurisdiction has been retroceded by the lease between the Secretary of the Army and Greenwald, and that the present plaintiffs are bound by the provisions of that lease. We agree that the plaintiffs, as sublessees, are bound by the provisions of the lease between the government and Greenwald. But we are unable to agree that the lease is effective to relinquish Federal jurisdiction. The clause relied upon is paragraph 7: "That the lessee shall comply with all applicable laws, ordinances and regulations of the State, County and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters."

There are several reasons why this provision of the lease does not vitalize the city's ordinances. The lease is a contract to which the city is not a party, and enforcement of its provisions is a matter between lessor and lessee. Even if the city might be regarded as a third party beneficiary, that status could hardly authorize it to invoke penal sanctions for the violation of its ordinances. Moreover, we are not aware that Congress has authorized the Secretary of War to retrocede any portion of the exclusive jurisdiction of the United States, and either action or authorization by Congress is essential to retrocession so long as the United States retains the land. Finally, it has been held that similar provisions

in Federal contracts do not make local ordinances effective in areas over which the Federal government has exclusive jurisdiction. *State* v. *Blair,* 238 Ala. 377, 191 So. 237; *City of Birmingham* v. *Thompson,* 200 F. 2d (5) 505.

The city correctly points out that the present lease is similar to that involved in *Offutt Housing Co.* v. *County of Sarpy,* 351 U. S. 253, and that both leases were made under the authority of the same Federal statutes. It was there held that the lessee's interest in a military housing project located in a Federal enclave was subject to local taxation. That decision was not based, however, upon the terms of the lease, but rather upon the ground that Congress had consented to State and local taxation. The court expressly stated that it was not holding that Congress had relinquished its exclusive jurisdiction over these areas. "We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case." 351 U. S. at 260-1.

The city also strongly emphasizes that under the lease the title to the building is in Greenwald and that both Greenwald and the plaintiffs, his sublessees, are private individuals engaged in business for private profit. The affidavit of a city investigator, submitted in opposition to the plaintiffs' motion for summary judgment, is to the effect that plaintiffs do not restrict their sales to military personnel or civilian employees of the Federal government, but sell promiscuously to anyone who is willing to buy. These considerations may raise doubts as to the wisdom of the cession and acceptance of exclusive jurisdiction, but for our purposes they are irrelevant. Private operations within an area over which the United States has exclusive jurisdiction do not become subject to State or local regulation because they are private. *Collins* v. *Yosemite Park & Curry Co.,* 304 U. S. 518; *Pacific Coast Dairy, Inc.* v. *Dept. of Agriculture of California,* 318 U. S. 285;

cf., Penn Dairies, Inc. v. *Milk Control Com. of Pennsylvania,* 318 U. S. 261.

The city's remaining contention rests upon a principle of international law. When jurisdiction over territory is transferred from one sovereign to another, the laws of the old sovereign governing private rights, so far as they are not incompatible with those of the new, remain in effect until they are altered or repealed by the new sovereign. This principle has been applied to the relations between State and nation with respect to Federal enclaves. *Chicago, Rock Island and Pacific Railway Co.* v. *McGlinn,* 114 U. S. 542; *Arlington Hotel Co.* v. *Fant,* 278 U. S. 439; *James Stewart & Co.* v. *Sadrakula,* 309 U. S. 94.

The cases relied upon, however, show the limitations of the doctrine. They concerned disputes between private parties, and those disputes were held to be governed by the State law as it existed before the United States acquired jurisdiction. None of them involved a direct assertion of governmental power by the superseded government, as does this case. More closely in point is *Collins* v. *Yosemite Park & Curry Co.,* 304 U. S. 518. There California had ceded exclusive jurisdiction to the United States, reserving only the right to tax. California's Alcohol Beverage Control Act contained regulatory provisions, and also imposed excise and license taxes. The excise taxes were sustained as to the company, which operated hotels, camps and stores in the park under contract with the Secretary of the Interior. But California's regulatory and licensing provisions were held to be unenforceable. The court said: "As there is no reservation of the right to control the sale or use of alcoholic beverages, such regulatory provisions as are found in the Act under consideration are unenforceable in the Park." 304 U. S. at 530.

The decree of the superior court of Cook County was correct and it is affirmed.

Decree affirmed.

APPENDIX C.

Constitution of the United States, Article 1, Section 8, Clause 17.

> **The Congress shall have Power * * * to exercise exclusive Legislation * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of * * * needful buildings;**

APPENDIX D.

Military Leasing Act of 1947, 61 Stat. 774-776, 10 U. S. C. Sections 1270, 1270d:

§ 1270. Lease of real or personal property; period of lease; terms and conditions; revocation; disposition of receipts; report to Congress

Whenever the Secretary of the Army shall deem it to be advantageous to the Government he is authorized to lease such real or personal property under the control of his Department as is not surplus to the needs of the Department within the meaning of the Act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary shall determine that a longer period will promote the national defense or will be in the public interest. The Secretary may include, among other terms and conditions in the lease, a right of first refusal in the lessee to purchase the property in the event of the revocation of the lease in order to permit sale thereof by the Government, but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law. Each such lease shall contain a provision permitting the Secretary to revoke the lease at any time, unless the Secretary shall determine that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event each such lease shall be revocable by the Secretary during a national emergency declared by the President. Notwithstanding section 303b of Title 50, or any other provision of law, any such lease may provide for the maintenance, protec-

tion, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. In the event utilities or services shall be furnished by the Department to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the Treasury to the credit of the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise hereinabove provided, any money rentals received by the Government directly under any such lease shall be deposited and covered into the Treasury as miscellaneous receipts. The authority herein granted shall not apply to oil, mineral, or phosphate lands. July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501; Aug. 5, 1947, c. 493, § 1, 61 Stat. 774; Sept. 28, 1951, c. 434, Title VI, § 605, 65 Stat. 366.

Repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641. See § 2667 of Title 10, Armed Forces.

§ 1270d. Same; State or local taxation; renegotiation of leases

The lessee's interest, made or created pursuant to the provisions of sections 1270-1270b, 1270d of this title, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of said sections shall contain a provision that if and to the extent that such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated. Aug. 5, 1947, c. 493, § 6, 61 Stat. 775.

Repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641. See § 2667 of Title 10, Armed Forces.

APPENDIX E.

Wherry Military Housing Act of 1949, 63 Stat. 570, 12 U. S. C. Section 1748d:

§ 1748d. Lease of property; terms and conditions

Whenever the Secretary of the Army, Navy, or Air Force determines that it is necessary to lease any land held by the United States on or near a military installation to effectuate the purposes of this subchapter, he may lease such land upon such terms and conditions as will, in his opinion, best serve the national interest. The authority conferred by this section shall be in addition to and not in derogation of any other power or authority of the Secretary of the Army, Navy, or Air Force. June 27, 1934, c. 847, Title VIII, § 805, as added Aug. 8, 1949, c. 403, § 1, 63 Stat. 570, and amended Aug. 11, 1955, c. 783, Title IV, § 401, 69 Stat. 651.

APPENDIX F.

Municipal Code of Chicago, Sections 130-10 to 130-14:

Food Purveyors (Retail).

130-10. The term "food purveyor" is hereby defined as any person operating a retail food establishment that keeps for sale, sells, or offers for sale, at retail, or is in the business of delivering to consumers, any cooked or uncooked meats, agricultural products, drinks, confections, condiments, or any other materials or articles used as food for human consumption, except live poultry or other live fowl, where the same are not served for consumption on the premises. [Amend. Coun. J. 12-1-50, p. 7251.]

130-11. It shall be unlawful for any person to engage in the business of food purveyor without first having obtained a license so to do.

130-12. An application for a food purveyor's license shall be made in conformity with the general requirements of this code relating to applications for licenses. Such application shall contain such further information as may be required by the board of health in order to inform it fully as to the size and nature of the place to be used for the purposes of the business and the conditions, equipment, and facilities for conducting the business therein, the health of persons to be employed and the regulations and facilities provided for them.

Before any license shall issue, the board of health shall cause an inspection to be made of the premises to be occupied by the applicant as a food purveyor, the equipment contained therein, the employes intended for the same, and all other matters relating to the business which it considers necessary to investigate from a health or sanitary standpoint.

130-13. Food purveyors are hereby divided into classes, and the annual license fee for each class is as follows:

Class I. This class shall include establishments which handle food and food products but do not sell fresh or frozen fruit or vegetables, or raw, fresh, frozen, smoked, salted, pickled, or cooked meats, fish, poultry, or game, or any products or preparations thereof which are not contained and sold in air-tight cans, bottles, or similar containers. The license fee for this class, if not more than three persons are engaged in such establishment, shall be six dollars.

Class II. This class shall include establishments which handle raw, fresh or frozen meats, fish, poultry, or game, but shall not include the sale or slaughter of live poultry or other live fowl. It shall include meat markets, poulterers, fish mongers, and all establishments operating on a "self-help" basis where the buyer helps himself to his purchases. It shall also include all food purveyors' establishments not falling under classes I or III. The annual license fee for this class, if not more than three persons are engaged in such establishment, shall be twenty-five dollars.

Class III. This class shall include establishments which handle fresh or frozen fruit or vegetables, or smoked, salted, pickled, or cooked meats, fish, poultry, or game, but do not sell any raw, fresh or frozen meats, fish, poultry, or game. The annual license fee for this class, if not more than three persons are engaged in such establishment, shall be twelve dollars.

Provided, however, that any additional persons engaged in any of the aforesaid classes of establishments shall be paid for at the rate of four dollars each, such sums to be added to the license fees aforesaid, and provided further, that where a food purveyor conducts or operates more than one of the three classes established hereunder he shall be required to procure but one license and such license shall be of the class that requires the payment of the highest license fee under this section.

The number of persons engaged shall be the number engaged in selling to the trade or in the making or manufacture of products sold in such establishments.

A single or "combination" license may be issued to an applicant to permit him to conduct or operate the business of food purveyor and to sell milk and milk products at retail, not for consumption on the premises, in connection with such business of food purveyor on the same premises. This provision shall not apply fo licenses for milk plants or milk receiving station. The fee to be paid for single or "combination" license shall equal the sum of the fees which the applicant would be required to pay if separate licenses for each business were issued to him. [Amend. Coun. J. 4-2-41, p. 4556; 11-6-47, p. 1172; 12-1-50, p. 7251.]

130-14. All purveyors selling commercial cuts of meats, or perishable meat food products, shall be equipped with at least one refrigerator or cooling room, of adequate size and capacity, so as to permit at all times the free circulation of air therein, and so as to maintain a temperature of forty-two degrees Fahrenheit, or lower.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 729

FRED THIELE AND EUGENE PANGER, CO-PARTNERS, D/B/A TWIN TOWERS COMMISSARY,

Respondents,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, AND MARTIN H. KENNELLY, MAYOR OF THE CITY OF CHICAGO; TIMOTHY J. O'CONNOR, COMMISSIONER OF POLICE OF THE CITY OF CHICAGO; AND ROY T. CHRISTIANSEN, COMMISSIONER OF BUILDINGS OF THE CITY OF CHICAGO,

Petitioners.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

REPLY BRIEF FOR PETITIONERS.

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---

REPLY BRIEF FOR PETITIONERS.

Preliminary Statement.

In their brief in opposition, respondents have elected to ignore a basic issue in the case at bar which presents a novel point of law. That point is the lease provisions which compel compliance with local laws and which requires the respondents to indemnify the United States from actions for nonobservance of such local laws. None of the cited cases hinged on this issue and the matter, is therefore, undecided by this Court. No authority relied

upon by respondents, nor, indeed, by petitioners, settles this issue. It is, then, imperative, that this Court resolve the issue lest the decision of the court below be regarded throughout the nation as settled law. It is true, as respondents point out, that the court below held such provisions of the lease to be unenforceable. It is for that very reason we ask this Court to grant certiorari.

The other basic issue is whether the power of "local taxation" provided for in Section 6 of the Military Leasing Act of 1947 (10 U. S. C. Section 1270d) includes the power of a municipality to tax and regulate a private business having a direct relationship to the public health, safety and welfare. Strangely, respondents have failed to discuss this basic issue.

Reply to Point I of Respondents' Argument.

Respondents here argue that the decision of the court below is based upon "familiar principles of constitutional law" (Brief in Opposition, pp. 4-7). We have already pointed out the unique aspects of the case at bar. Respondents' efforts to liken the facts in the case at bar to those in *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, have no success because there is no similarity.

Respondents challenge our statement that the United States leased *all* of its land to them because other governmental property was "adjacent" to the land in question. Adjacent, yes, but not contiguous. The Government has many properties in the City of Chicago, some in the vicinity of respondents' building. The basic fact remains, however, that this particular land was leased in its entirety to Greenwald.

Respondents contend that the United States is "actively in charge" of the premises because "A number of provisions in the * * * lease reserve to Army authorities

wide areas of supervision, inspection and control" (Brief in Opposition, p. 5) referring this Court to pp. 10, 11 of the Additional Abstract as grounds therefor. The provisions of the lease to which respondents refer merely state that "for safety and security purposes" the use and occupation of the premises shall be subject to rules and regulations prescribed by the Commanding Officer; and that *after* the premises are not under the control of the Federal Housing Commissioner and *after* there is no Federal Housing Administration mortgage on the property, then the lessee shall adhere to *such standards of maintenance and repair* of the Housing Project *as shall be mutually agreed upon* between the lessee and the Commanding Officer. These provisions of the lease certainly do not protect the general public from improper health safeguards in the operation of a commissary.

Respondents argue that we have charged them with a determination to "foster and perpetuate conditions of filth and contamination" (Brief in Opposition, p. 6). We have never so charged. We have, however, pointed out that this is possible. If we were to rely upon the good faith and honor of every food purveyor, there would be no need for regulation in this regard. It is the unintended violation of health regulations that we fear. Through ignorance, and sometimes by intent, safety regulations are disobeyed. By inspection and regulation, we protect the public from danger. Furthermore, the record is clear (Abst. 18) that people from the neighborhood, not living in the Twin Towers and not Army personnel, are permitted to buy food in the Commissary. It is therefore apparent the City has a vital interest in the manner which the Commissary is operated.

Respondents contend that the ordinances in question do not pertain to them because the lease refers to "applicable" ordinances (Brief in Opposition, p. 6, 7). We must

confess we are baffled by this statement. Ordinances governing food purveyors are "applicable" if we are dealing with food purveyors, as in the case at bar. An ordinance relating to taverns, beauty shops, or tailor shops would not be "applicable." Respondents argue that the ordinance is not applicable because the City of Chicago has no jurisdiction over the land. We cannot follow this reasoning. In such case the lease provisions would be meaningless. No ordinance, of any kind whatsoever, would be "applicable," so that there would be no necessity of such language in the lease. The fact remains, and respondents cannot overcome it, that the lease does provide that respondents will comply with local laws and that they will hold the United States harmless from actions brought for non-observance of such local laws. This is irrefutable and respondents cannot dodge the issue by contending the ordinance in question is not "applicable."

Reply to Point II of Respondents' Argument.

Respondents here attempt to answer cases cited by us in our Petition. We do not believe this is the place to analyze authorities.

However, under their first point of argument respondents argue that the cases there set out involve partial retrocession of jurisdiction by Congress. They include in such cases *Offutt Housing Company* v. *Sarpy County*, 351 U. S. 253, which the court below held involved a lease similar to that in the case at bar (Petition, p. 18). The *Offutt* lease is strikingly similar to the lease in the case at bar and this Court there held local authorities could tax the lessee's interest even though on Federal land. Respondents conclude (Brief in Opposition, p. 8) that local governments have no right to license activities on land subject to exclusive federal jurisdiction. Respondents are usurping

the function of this Court in so deciding because that is the issue. The lease provides that respondents *must* obtain a license.

Under their second point of argument, respondents contend that cases there discussed involved situations where the Federal function "was not unduly hampered by the imposition of * * * local * * * regulation" (Brief in Opposition, p. 8). We challenge respondents to show anywhere in the record where the licensing provisions here involved would "hamper" any federal function. Respondents have never argued that it would. The facts show that it would not interfere in any way. Respondents continue to mislead this Court by arguing (Brief in Opposition, pp. 8, 9):

> "* * * the proposed enforcement of the local ordinances would effectively deprive the Federal Government of a facility which it specifically requires * * *."

The foregoing is an unbelievable statement. It can only mean that if health inspections disclose a dangerous health menace to persons dealing with respondents' commissary (including the Military), and if a license is therefore denied or withheld until the conditions are corrected, then the Federal Government is being "deprived" of a needed facility. Such a deprivation would only be in the best interests of the United States Government and its personnel.

Lastly, respondents argue that local laws prevailing at the time of cession of jurisdiction by a state to the Federal Government survive after cession, *unless or until they come into conflict with federal laws* (Brief in Opposition, p. 9). We accept this. But we again challenge respondents to show from this record where any conflict has been proven with federal laws. There is no conflict and, therefore, from respondents' own argument, local laws are applicable to the commissary in question.

Conclusion.

This case involves basic issues which have not been determined by this Court.

With the widespread application of the provisions of the Military Leasing Act of 1947 and Wherry Housing Act of 1949 within the boundaries of municipalities throughout the country it is of vital importance that this Court decide the issues presented in our petition.

This is especially true where the doctrine of governmental immunity is not asserted by the Government, but rather by private individuals who own and operate a commissary for personal profit.

WHEREFORE, it is respectfully prayed that the petition for writ of certiorari be granted.

Respectfully submitted,

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Petitioners.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinions below are adequately set forth in the Petition.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

Does the exercise of exclusive federal jurisdiction pursuant to Article I, Section 8, Clause 17, of the Constitution of the United States preclude the application of municipal licensing and zoning ordinances to a food commissary located on land subject to such exclusive federal jurisdiction?

CONSTITUTIONAL AND STATUTORY PROVISIONS.

In addition to the constitutional and statutory provisions set forth in the Petition, Article VI, Clause 2, of the Constitution of the United States is involved.

STATEMENT.

The respondents operate a commissary, *i. e.*, a small food shop, located in an apartment building in Chicago known as the "Twin Towers". In 1943, and prior to the erection of the building, the United States was ceded exclusive jurisdiction by the State of Illinois over the land on which Twin Towers stands, subject only to the reservation by the State of the right to serve civil and criminal process.

Twin Towers is operated under a lease between the Federal Government and Herbert S. Greenwald. It was constructed at the Government's request to provide modern living facilities for personnel assigned to duty with the Fifth Army Headquarters, which is located on part of the ceded land adjacent to Twin Towers (Abst., pp. 13-17, 25; Petition, Apps. D, E). Twin Towers houses only military and civilian personnel so assigned (Abst., pp. 14, 15). Other persons may be housed in Twin Towers only in the event that the rental units are not fully occupied by Fifth Army personnel (Add. Abst., pp. 4-7). The Federal Government requested that a commissary be included in the plans and specifications for Twin Towers (Abst., p. 14). In accord-

ance with the Government's desires, space for a commissary was leased by Greenwald to the respondents (Abst., p. 3). There is no direct entrance from the street to the commissary (Abst., pp. 4, 19).

While operating the commissary, the respondents were repeatedly served with arrest slips by the City of Chicago for failure to have a food purveyor's license. Respondents brought this action for declaratory relief in March, 1953, to prevent the petitioners from interfering with the operation of the commissary. In their pleadings, petitioners averred that the location of the commissary violated the City's zoning ordinance and for that reason a food purveyor's license could not be issued to respondents (Abst., p. 11). Both the trial court and the Supreme Court of Illinois held that the local ordinances were inapplicable (Add. Abst., pp. 14-16; Petition, App. B).

ARGUMENT.

Respondents submit that the decision below involves merely the application of familiar principles of constitutional law and that it fully conforms with this Court's prior decisions. No novel issue of law is present.

I.

THE DECISION OF THE ILLINOIS SUPREME COURT IS BASED ON FAMILIAR PRINCIPLES OF CONSTITUTIONAL LAW.

The decision of the Supreme Court of Illinois is based on a long line of precedents of this Court, including *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525 (1885); *Benson* v. *United States*, 146 U. S. 325 (1892); *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439 (1929); *United States* v. *Unzeuta*, 281 U. S. 138 (1930); *Pacific Coast Dairy, Inc.* v. *Dept. of Agriculture of California*, 318 U. S. 285 (1943); *Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518 (1938).

The only basis of the Petition for Certiorari herein is the claim that the facts in the case at bar are distinguishable from the *Collins* case. The petitioners have managed to find only inconsequential differences which merely re-emphasize experience's teaching that no two cases can be exactly alike. In their effort to prove the two cases "easily distinguishable", they have extended themselves to the point of creating "differences". Despite these efforts, petitioners have been unable to cite a single authority for the argument that the r[illegible] or purported differences between the *Collins* case and the case at bar require a different holding in the present case.

Implying that the *Collins* case turned on the Federal Government's status as an "active partner" in the profits of the Yosemite Park Co., petitioners ignore the established rule that the absence of a federal financial interest does not deprive the United States of exclusive territorial jurisdiction. *Benson* v. *United States*, 146 U. S. 325 (1892); *United States* v. *Unzeuta*, 281 U. S. 138 (1930); *Petersen* v. *United States*, 191 F. 2d 154 (9th Cir., 1951), *cert. denied*, 342 U. S. 885 (1951). This Court permitted state taxation and prohibited state licensing in the *Collins* case solely because it found that the United States exercised exclusive jurisdiction over the land except for California's explicitly reserved jurisdiction to tax. *Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518, 533-536 (1938). Moreover, this Court held, petitioners' suggestion to the contrary notwithstanding (Petition, pp. 2-3), that jurisdiction to tax does not include the power to license or regulate. *Ibid.*

Petitioners misstate the facts when they assert that the United States has leased "*all* of its land" to respondents' lessor—a fact alleged to constitute another important distinction from the *Collins* case (Petition, pp. 7-8). Petitioners' own documentary evidence establishes that Twin Towers is adjacent to the United States Army, Fifth Army Headquarters (Abst., p. 25), which, as even petitioners will admit, has not been leased to Greenwald. Furthermore, even if petitioners' assertion conformed to the facts, their argument that by leasing all of the land the Government forfeited its jurisdiction finds no support in any reported decision.

Petitioners would also be hard put to reconcile with the record their implied contention that the United States is not "actively in charge" of Twin Towers (Petition, p. 7). A number of provisions in the Twin Towers lease reserve to Army authorities wide areas of supervision, inspection and control over the building (Add. Abst., pp. 10, 11).

There is no reason to assume that the United States has failed to exercise these powers. Petitioners compound their misstatements by insinuating that respondents are motivated in this litigation by a determination to foster and perpetuate conditions of filth and contamination (Petition, p. 8). This suggestion not only attacks, without any support in the record, the integrity of respondents but also the ability of the Federal Government and the United States Army to safeguard their personnel. It is hardly conceivable that the United States, which retains full control over Twin Towers and hence over respondents' commissary, would tolerate the conditions which petitioners describe. Petitioners' apparent solicitude to protect Fifth Army personnel by means of a food purveyor's license is unconvincing in view of their position that the Chicago Zoning Ordinance precludes the issuing of such license to respondents (Abst., p. 11).

The argument made by petitioners that certain provisions in the Twin Towers lease effect a retrocession of jurisdiction (Petition, p. 9) is amply refuted in the opinion of the Supreme Court of Illinois (Petition, pp. 17-18). It should, in addition, be pointed out that the lease provisions on which petitioners rely require compliance only with "applicable" ordinances and regulations. Since the City of Chicago has no jurisdiction over land subject to exclusive federal jurisdiction, the City's ordinances are not applicable. The lease provisions cannot and do not purport to retrocede jurisdiction to the City. The lease used in this case was a standard form designed to cover both situations in which the United States does and does not exercise exclusive jurisdiction over a housing project (Abst., p. 23). See *City of Birmingham* v. *Thompson*, 200 F. 2d 505, 507 (5th Cir., 1952); *State* v. *Blair*, 238 Ala. 377, 191 So. 237 (1939). This is borne out by paragraph 3 of the lease which enjoins violation of local eviction laws "in the event

only that such law *is applicable* to housing units erected in the said military installation" (Add. Abst., p. 7, emphasis added).

Petitioners have presented nothing except immaterial and inaccurate assertions of fact in support of their petition. There has been no showing made that the decision in the case at bar constitutes the slightest departure from *Collins* v. *Yosemite Park & Curry Co.* and the other decisions of this Court on which the Supreme Court of Illinois relied.

II.

THE DECISION OF THE SUPREME COURT OF ILLINOIS IS ENTIRELY CONSISTENT WITH THE CASES CITED BY PETITIONERS.

Having cited a long string of cases purportedly not in accord with the decision below, the petitioners leave the assessment of their relevance to the respondents and the Court. An examination of these citations fails to disclose a single case which offers the slightest support to petitioners' argument. The cited cases fall into three categories, each of which presents a fact situation distinctly different from the present case:

(1) Cases Involving Partial Retrocession of Jurisdiction by Congress.

In *Offutt Housing Company* v. *Sarpy County*, 351 U. S. 253 (1956), *Howard* v. *Commissioners*, 344 U. S. 624 (1953), *Fort Dix Apartments Corp.* v. *Borough of Wrightstown*, 225 F. 2d 473 (3rd Cir., 1955), *Meade Heights, Inc.* v. *State Tax Comm.*, 202 Md. 20, 95 A. 2d 280 (1953), and *Conley Housing Corp.* v. *Coleman*, 211 Ga. 835, 89 S. E. 2d 482 (1955), the holdings were merely that states

had the right to tax private persons or property located on lands subject to exclusive federal jurisdiction *if explicitly permitted to do so by acts of Congress.* In the case at bar, too, the respondents pay local taxes because Congress has so provided (Add. Abst., p. 8; Petition, p. 22). However, neither congressional retrocession nor state reservation of jurisdiction to tax authorizes the local licensing of, or control over, activities on land subject to exclusive federal jurisdiction. *Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518 (1938); *City of Birmingham* v. *Thompson*, 200 F. 2d 505, 507 (5th Cir., 1952). See *James Stewart & Co.* v. *Sadrakula*, 309 U. S. 99, 103 (1940); *Oklahoma City* v. *Sanders*, 94 F. 2d 323, 328 (10th Cir., 1938).

(2) Cases Involving Land Not Subject to Exclusive Federal Jurisdiction.

The following cases cited by petitioners have held that states may tax or regulate some private activities or property, despite their existing connection with certain federal functions: *Penn-Dairies, Inc.* v. *Milk Control Comm.*, 318 U. S. 261 (1943), *Alabama* v. *King & Boozer*, 314 U. S. 1 (1941), *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558 (1946), *Graves* v. *New York*, 306 U. S. 466 (1939), *American Motors Corp.* v. *Kenosha*, 274 Wis. 315, 80 N. W. 2d 363 (1957), *People* v. *Vendome Service, Inc.*, 12 N. Y. S. 2d 183 (1939), *aff'd* 19 N. Y. S. 2d 195 (1940), *Mayor of Baltimore* v. *Linthicum*, 170 Md. 245, 183 Atl. 531 (1936). In each of these cases, however, exclusive federal jurisdiction was *not* involved. Moreover, in each case, the court specifically found that the federal function involved was not unduly hampered by the imposition of the local tax or regulation. In the present case, Twin Towers is not only subject to exclusive federal jurisdiction, but the proposed enforcement of the local ordinances would effectively deprive the Federal Government of a facility which it

specifically requires as part of a military installation. See *Leslie Miller, Inc.* v. *Arkansas*, 352 U. S. 187 (1956); *Pittman* v. *Home Owners Loan Corp.*, 308 U. S. 21 (1939); U. S. CONST. art. VI, cl. 2. In *Palmer* v. *Barrett*, 162 U. S. 399 (1896), a question of exclusive federal jurisdiction over land leased by the Federal Government to private commercial enterprisers was obviated because the State of New York in its cession statute specifically ceded jurisdiction to the Federal Government only "as long as" the Federal Government put the land to actual military use and "no longer." *Id.* at 400.

(3) Cases Involving the Survival of "Municipal Law" After Cession of Jurisdiction.

Chicago, R. I. & P. R. R. Co. v. *McGlinn*, 114 U. S. 542 (1885), and *James Stewart & Co.* v. *Sadrakula*, 309 U. S. 94 (1940), both held that local rules of private law prevailing at the time of cession of jurisdiction by a state to the Federal Government survive after cession, unless or until they come into conflict with federal laws. But several of the cases cited by petitioners also establish that, absent any explicit grant by Congress or a reservation by the state, the political and regulatory powers of the state do *not* survive cession. *Murray* v. *Joe Gerrick & Co.*, 291 U. S. 315 (1934), *Herken* v. *Glynn*, 151 Kan. 855, 101 P. 2d 946 (1940).

CONCLUSION.

The decision below is based on well established principles of constitutional law and is in accord with all applicable decisions of this Court. For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX.

Constitution of the United States, Article VI, Clause 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.